

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**  
UNITED STATES OF AMERICA, : 19-cr-00207-NGG-1  
:   
- versus - : U.S. Courthouse  
: Brooklyn, New York  
:   
MICHAEL BROGAN, : May 24, 2019  
Defendant : 2:21 PM  
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING  
BEFORE THE HONORABLE ROBERT M. LEVY  
UNITED STATES MAGISTRATE JUDGE

**A P P E A R A N C E S:**

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1 THE CLERK: Criminal Cause for a Pleading, case  
2 number 19-cr-207, United States v. Michael Brogan.

3 Counsel, please state your appearances.

4 MR. SELDEN: Good afternoon, your Honor.

5 On behalf of the United States, Assistant  
6 United States Attorney Phil Selden.

7 Good afternoon.

8 THE COURT: Good afternoon.

9 MR. SCHNEIDER: Federal Defenders by Michael  
10 Schneider for Mr. Brogan, who is present.

11 Good afternoon.

12 THE COURT: Good afternoon.

13 THE DEFENDANT: Good afternoon, your Honor.

14 THE COURT: Good afternoon, sir.

15 THE CLERK: Mr. Brogan, could you please raise  
16 your right hand?

17 M I C H A E L B R O G A N,

18 having been first duly sworn, was examined and  
19 testified as follows:

20 THE CLERK: And can you just state your name  
21 for the record?

22 THE DEFENDANT: Michael Brogan.

23 THE CLERK: Thank you. You can put your hand  
24 down.

25 THE COURT: All right. So what does Mr. Brogan

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1 intend to do today?

2 MR. SCHNEIDER: Mr. Brogan has authorized me to  
3 offer his guilty plea to the information filed in this  
4 case. He has not been arraigned on it yet. This is our  
5 first appearance on the information.

6 THE COURT: Oh, okay. Well, actually let's do  
7 the consent, and then we'll do the information and the  
8 waiver of indictment.

9 So Do you understand that you have a right to  
10 have your guilty plea heard by Judge Garaufis, who is the  
11 district judge in this case?

12 THE DEFENDANT: I was informed of such by my  
13 legal counsel --

14 THE COURT: Okay.

15 THE DEFENDANT: -- Mr. Schneider.

16 THE COURT: And I see that you have signed a  
17 consent to have a plea taken before a magistrate judge.

18 THE DEFENDANT: Yes.

19 THE COURT: I'm the magistrate judge.

20 THE DEFENDANT: Yes.

21 THE COURT: So you're consenting --

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: -- to have it before me.

24 THE DEFENDANT: Yes.

25 THE COURT: All right. So as it says here, on

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1 the consent form, you understand that you'll suffer no  
2 prejudice if you don't consent. Judge Garaufis would be  
3 happy to hear your plea. No one would be upset with you  
4 in any way.

5 Do you understand that?

6 THE DEFENDANT: I understand, your Honor, yes.

7 THE COURT: Are you making this decision  
8 voluntarily?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you have any questions about the  
11 consent?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: Okay. Great. So that's approved.

14 The next issue is your right to an indictment.  
15 So Mr. Schneider, can you just briefly go over what you  
16 explained to Mr. Brogan with respect to his right to --

17 MR. SCHNEIDER: Sure. I explained to him that  
18 the Constitution of the United States in federal cases  
19 requires that a defendant be prosecuted by any felony by  
20 indictment but that any defendant can waive that right,  
21 and chose instead to be prosecuted by an information.

22 I explained to him basically that an indictment  
23 is an accusation presented to a grand jury though  
24 evidence and witnesses and the grand jury votes on  
25 whether there's enough evidence to charge a person with a

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1 crime, but that that information is a document drafted by  
2 the government containing the charge.

3 THE COURT: Okay. And do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: And you understand what a grand  
6 jury is?

7 THE DEFENDANT: Yes, essentially a jury of my  
8 peers.

9 THE COURT: Yes, and it would be a number of  
10 people who were called to serve on a jury and they would  
11 hear the evidence against you, and they would determine  
12 whether there's probable cause to believe that you  
13 committed a crime -- any crime that's presented for them  
14 to consider.

15 And so that is a screen between you and the  
16 prosecutor that would allow citizens to opine on whether  
17 or not the government's evidence is sufficient to bring  
18 criminal charges.

19 THE DEFENDANT: Yes.

20 THE COURT: And that's your right. Criminal  
21 charges are serious, and that's why the constitution  
22 provides a right for individuals to have the charges  
23 against them presented to a grand jury so that it won't  
24 simply be the prosecutor who is drafting the charges.

25 Do you understand?

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1 THE DEFENDANT: I do, your Honor, yes.

2 THE COURT: So I understand from your lawyer,  
3 and from the waiver of indictment form here, and your  
4 signature on that form, that you are giving up your right  
5 to have the charges against you presented, or at least  
6 the evidence presented to a grand jury to determine  
7 whether there's probable cause to bring criminal charges  
8 against you.

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: And that you prefer at this point  
11 to proceed by way of information.

12 THE DEFENDANT: Yes.

13 THE COURT: Okay.

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Okay. And do you have any  
16 questions about what you're doing?

17 THE DEFENDANT: No, nothing that hasn't already  
18 prior -- been discussed prior.

19 THE COURT: Okay.

20 THE DEFENDANT: No, no, your Honor.

21 THE COURT: Okay. And you've discussed it with  
22 your lawyer. You fully understand?

23 THE DEFENDANT: Yes.

24 THE COURT: And are you making this decision  
25 voluntarily?

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1 THE DEFENDANT: I am, your Honor.

2 THE COURT: Has anybody pressured you, forced  
3 you --

4 THE DEFENDANT: No, definitely not.

5 THE COURT: Okay, great. All right. So I find  
6 that your waiver is knowing and voluntary, so I'll move  
7 now to the information. The information is a document as  
8 your lawyer explained that states criminal charges, and  
9 it's written -- drafted by the United States Attorney's  
10 Office.

11 Have you had a chance to read the information  
12 in this case?

13 THE DEFENDANT: I -- I have, as a matter of  
14 fact.

15 THE COURT: And do you have a copy with you?

16 MR. SCHNEIDER: We don't have a copy up here.

17 MR. SELDEN: I could check and see if I have an  
18 extra copy, your Honor.

19 THE COURT: I'll be happy to give you mine.  
20 Actually, do you know what? I will read it out loud.  
21 Since you don't have it, it's probably easier.

22 Threatening to assault and murder a United  
23 States official. On or about December 4th, 2018, within  
24 the Eastern District of New York and elsewhere, the  
25 defendant Michael Brogan, did knowingly and intentionally

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1 threaten to assault and murder a United States official  
2 with intent to impede, intimidate, and interfere with  
3 such official while engaged in the performance of  
4 official duties, and with intent to retaliate against  
5 such official on account of the performance of official  
6 duties. To wit, Brogan threaten to assault and murder a  
7 United States Senator, otherwise known as "The Senator",  
8 an individual whose identity is known to the United  
9 States Attorney, in retaliation for the Senator's  
10 opposition to positions of the President of the United  
11 States of America, and the Senator's position concerning  
12 reproductive rights.

13 Do you understand the charges.

14 THE DEFENDANT: I do, your Honor. Yes.

15 THE COURT: Okay. And is -- that is the  
16 information to which Mr. Brogan intends to plead guilty?

17 MR. SCHNEIDER: Correct.

18 THE COURT: Okay. So you've been placed under  
19 oath. That means that the questions -- any statements  
20 you make here now will be under oath, they're subject to  
21 the penalty of perjury. So that I am going to be asking  
22 you a lot of questions and you'll have to answer those  
23 questions fully, completely, and truthfully.

24 THE DEFENDANT: Yes.

25 THE COURT: And if you don't do that, you could



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1 be prosecuted for perjury.

2 Do you understand?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Okay. Great. And if you have any  
5 questions at all about what the questions mean, feel free  
6 to consult with your lawyer privately at any time, or ask  
7 me a question.

8 THE DEFENDANT: I -- I do. Actually, Mike,  
9 could I just --

10 MR. SCHNEIDER: Yeah, sure. Just one second,  
11 please.

12 (Counsel and client confer)

13 MR. SCHNEIDER: Thank you, Judge. We're ready,

14 THE COURT: All right. Was your lawyer able to  
15 answer your questions?

16 THE DEFENDANT: Yes. Yes, your Honor.

17 THE COURT: Okay. So we finished up with the  
18 grand jury, and with the indictment, and you waived  
19 presentation before a grand jury, with the knowledge that  
20 a grand jury might or might not indict you.

21 We've now had the information read to you, and  
22 you told me you understand it, so I am going to ask you a  
23 number of questions to make sure that you fully  
24 understand your rights, and the charges against you, what  
25 it means to plead guilty because these are constitutional

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1 rights that you have. And I want to be sure that, you  
2 know, you -- I'm sure you've discussed it carefully with  
3 your lawyer but I just want to be sure that you  
4 understand them all.

5 So I am just going to be -- but you will be  
6 answering them under the penalty of perjury.

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Okay. So tell me again, what is  
9 your full name?

10 THE DEFENDANT: Michael Brogan, B-R-O-G-A-N.

11 THE COURT: How old are you?

12 THE DEFENDANT: 51.

13 THE COURT: What is the last level of schooling  
14 that you finished?

15 THE DEFENDANT: I obtained a Bachelor's degree  
16 in 1989.

17 THE COURT: Okay, in any particular area?

18 THE DEFENDANT: Information systems.

19 THE COURT: Okay. Are you now or have you  
20 recently been under the care of a doctor or a  
21 psychiatrist?

22 THE DEFENDANT: Never. I mean, as part of my  
23 pre-trial conditions, I do have to go every Monday night  
24 to meet with a counselor but I have never been prescribed  
25 any pro forma psychiatric regimen.

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1 THE COURT: Okay. So only as a condition of  
2 pre-trial services?

3 THE DEFENDANT: Only as a condition of pre-  
4 trial services.

5 THE COURT: Okay. And in the past 24 hours,  
6 have you taken any narcotic drugs, drunk any alcoholic  
7 beverages?

8 THE DEFENDANT: Absolutely not.

9 THE COURT: Taken any medicine or pills?

10 THE DEFENDANT: No, never, in fact.

11 THE COURT: Have you ever been hospitalized or  
12 treated for drug addiction?

13 THE DEFENDANT: Never.

14 THE COURT: For alcoholism?

15 THE DEFENDANT: Never.

16 THE COURT: For a mental or emotional problem?

17 THE DEFENDANT: Never, that's (indiscernible).

18 THE COURT: So these questions just go to your  
19 capacity at this time to plead.

20 Is your mind clear now?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Do you understand what's going on  
23 here and why you're here today?

24 THE DEFENDANT: Yes, I do.

25 THE COURT: Okay. I have a few questions for

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1 your lawyer, and then come back to you.

2 Mr. Schneider, have you discussed this matter  
3 fully with your client?

4 THE DEFENDANT: Yes, I have.

5 THE COURT: Is he -- does he understand the  
6 rights he would be waiving by pleading guilty?

7 MR. SCHNEIDER: I believe he does.

8 THE COURT: Is he capable of understanding the  
9 nature of these proceedings?

10 MR. SCHNEIDER: Yes.

11 THE COURT: Do you have any doubts as to his  
12 competence to plead at this time?

13 MR. SCHNEIDER: No.

14 THE COURT: Have you advised him of the  
15 possible maximum and minimum sentence and fine, and other  
16 penalties that can be imposed?

17 MR. SCHNEIDER: Yes.

18 THE COURT: Have you discussed with him the  
19 effect of the sentencing guidelines?

20 MR. SCHNEIDER: Yes.

21 THE COURT: Have you advised him that the  
22 guidelines are advisory, and that the Court will  
23 calculate his guidelines range but will decide using --  
24 considering other factors, whether or not to sentence him  
25 within the guidelines, above or below?

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1 THE DEFENDANT: Yes.

2 THE COURT: Have you advised him that if he  
3 were not a citizen of the United States, a guilty plea  
4 could result in a deportation?

5 MR. SCHNEIDER: I haven't discussed that with  
6 him. My client was born in Brooklyn.

7 THE COURT: Yes.

8 MR. SCHNEIDER: So I didn't have that  
9 discussion.

10 THE COURT: I am required to ask that question  
11 even if you were born in Brooklyn.

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand that?

14 THE DEFENDANT: I do, your Honor, yes.

15 THE COURT: Okay. Great.

16 THE COURT: Do you understand there's no  
17 guarantee what your guidelines range will be or what your  
18 sentence will be?

19 THE DEFENDANT: Oh, quite -- quite the  
20 contrary. I thought that -- wasn't there a guidelines  
21 established that --

22 MR. SCHNEIDER: There is a guidelines range in  
23 the plea agreement which is the government's estimate,  
24 which matches my estimates, and the parties think that  
25 that will be the likely guidelines range but in the end,

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1 the judge, Judge Garaufis, will decide the guidelines  
2 range, and there's no guarantee of what guidelines range  
3 he will decide but that is our best estimate of the  
4 guidelines range.

5 THE DEFENDANT: Okay.

6 MR. SCHNEIDER: Okay?

7 THE DEFENDANT: Yes, your Honor -- yes.

8 THE COURT: Do you understand?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. So what's going to happen,  
11 and I will go over it again later but Judge Garaufis will  
12 calculate your guidelines range, and he is going to refer  
13 to what the government said, he's going to refer to what  
14 you and lawyer say. You have a right to weigh in on that  
15 but ultimately, the decision is his.

16 And then Judge Garaufis will review a number of  
17 factors, and he'll decide to whether to sentence you  
18 within the guidelines, above it, or below the guidelines.  
19 So the Court has some discretion in deciding how to  
20 sentence you.

21 And the important thing is that at this point,  
22 no one knows for sure what your guidelines range will be  
23 or what your sentence will be. Judge Garaufis doesn't  
24 know, the prosecutor doesn't know, and you and your  
25 lawyer don't know. No one knows. There is more

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1 information that has to be provided to the Court to make  
2 that decision.

3 Does that make sense?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Okay. So there is no guarantee  
6 what your sentence will be or what the guidelines range  
7 will be at this time.

8 THE DEFENDANT: Yes.

9 THE COURT: Okay. Any questions so far?

10 THE DEFENDANT: No, sir.

11 THE COURT: Okay. Have you discussed your case  
12 fully with your lawyer?

13 THE DEFENDANT: I have, yes.

14 THE COURT: Are you satisfied to have him  
15 represent you?

16 THE DEFENDANT: I am, yes.

17 THE COURT: Now as your lawyer, I am sure, has  
18 explained to you, you have a number of constitutional and  
19 statutory rights that you will give up if you plead  
20 guilty. And so I want to be sure you understand them and  
21 are knowingly and voluntarily giving up those rights.

22 That's when anyone pleads guilty, this is what  
23 we go through to make sure that they fully know what  
24 they're doing, okay? So you have a right to plead not  
25 guilty.

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1 Do you understand that?

2 THE DEFENDANT: I do, your Honor.

3 THE COURT: And if you continue to plead not  
4 guilty, it would be your right under the Constitution and  
5 laws of this country to a speedy trial, held in public,  
6 before a jury, with the assistance of your lawyer on the  
7 charges in the information that we went through, okay?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And of course if at any point in  
10 these proceedings you cannot afford an attorney, the  
11 Court will make sure that an attorney is appointed to  
12 represent you at all stages of the case, all the way  
13 through trial, and if you were convicted, all the way  
14 through your appeal; again, at no cost to you.

15 Do you understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: So again it's your right, if you  
18 wish, to have a trial, and if you do go to trial, you  
19 would be presumed innocent. The government would have  
20 the burden of proving that you're guilty by what's called  
21 competent evidence that's admissible at trial. We have  
22 special rules of evidence that deal with that.

23 And you would have to -- the government would  
24 have to prove any charges it wishes to bring against you  
25 beyond a reasonable doubt. We would have to convince



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1 jurors beyond a reasonable doubt of any charge they want  
2 to find you guilty of.

3           You would not have to prove you're innocent.  
4 You would not even have to present any evidence at all.  
5 The burden is entirely on the government.

6           Do you understand that?

7           THE DEFENDANT: Yes, sir.

8           THE COURT: And even if you did everything that  
9 the government has accused you of, if the government  
10 cannot convince a jury beyond a reasonable doubt that  
11 you're guilty, the jurors would have a duty to find you  
12 not guilty.

13           Do you understand that?

14           THE DEFENDANT: Yes, sir.

15           THE COURT: Any questions so far?

16           THE DEFENDANT: No, sir.

17           THE COURT: So if you decided to go to trial,  
18 the government would to bring its witnesses to court.  
19 They would have to testify. You and your lawyer would be  
20 able to listen to the testimony. You would be present  
21 for it. Your lawyer would have the right to cross-  
22 examine them, to object to the government's evidence and  
23 to present evidence in your defense, and to call  
24 witnesses that you want to have testify at trial to  
25 appear in court.

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1 Do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Any questions about that?

4 THE DEFENDANT: No.

5 THE COURT: Okay. So these are just basic  
6 rights if you chose to have a trial.

7 If you decided to go to trial, you would have a  
8 choice of whether or not to testify. It's your right to  
9 testify if you wished to do so but no one could force you  
10 to testify because you have a Fifth Amendment privilege  
11 that guarantees you the right to remain silent and not to  
12 incriminate yourself.

13 Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And as part of that right, if you  
16 decide not to testify, Judge Garaufis will instruct the  
17 jurors that they couldn't hold that against you. In  
18 other words, you can't be penalized for asserting the  
19 Fifth Amendment.

20 Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. So the jury would be  
23 instructed that they couldn't hold it against you and  
24 assume that you're guilty because you didn't testify in  
25 your own defense.

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1           If you plead guilty, and if Judge Garaufis  
2 accepts your plea, you'll be giving up your  
3 constitutional rights to a trial and the other rights t  
4 that I've just explained. There won't be any trial at  
5 all. The Court will just enter a judgment that you're  
6 guilty of the charge that you're pleading to, and you  
7 won't be able to appeal from the judgment of guilty.

8           Do you understand that?

9           THE DEFENDANT: Yes, sir.

10          THE COURT: And if you do plead guilty, I am  
11 going to have to ask you some questions because I have to  
12 be convinced that you really are guilty, and then you'll  
13 have to answer my questions, and admit your guilt. And  
14 when you do that, you're giving up your right to remain  
15 silent and not to incriminate yourself.

16          THE DEFENDANT: Yes, sir.

17          THE COURT: Do you understand? Okay.

18          Any questions at all?

19          THE DEFENDANT: No. Well, your Honor, so this  
20 is the point where you ask me the questions about what  
21 transpired?

22          THE COURT: Yeah --

23          MR. SCHNEIDER: At the end, he'll ask you.

24          THE COURT: Soon. I just want to make sure --

25          THE DEFENDANT: Okay.

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1 THE COURT: -- before I get to that point  
2 because that's part of your right to remain silent. So I  
3 don't want to have you to tell me anything until I am  
4 sure that you understand all of your rights before you do  
5 that.

6 THE DEFENDANT: I do. Can I -- Michael, can I  
7 confer with you just for a moment?

8 MR. SCHNEIDER: Sure. Can I have one moment?

9 THE COURT: Sure.  
10 (Counsel and client confer)

11 MR. SCHNEIDER: Thank you, Judge.

12 THE COURT: Sure. Now was your lawyer able to  
13 answer your questions?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: So are you ready to proceed?

16 THE DEFENDANT: I am, yes.

17 THE COURT: Okay. So you understand then that  
18 I am going to be asking you those questions soon about  
19 what you did in order to be sure that you really are  
20 guilty, so that I can recommend to Judge Garaufis whether  
21 or not to accept a guilty plea and you're going to have  
22 to answer my questions and admit your guilt, if in fact  
23 you wish to plead guilty, and in fact you are guilty.

24 Do you understand?

25 THE DEFENDANT: Yes, sir.

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1           THE COURT: And when you do that, you're giving  
2 up your right to remain silent and not to incriminate  
3 yourself.

4           THE DEFENDANT: Yes, sir.

5           THE COURT: That's all part of asking you those  
6 questions.

7           Okay. Now you asked a little while ago about  
8 sentencing, and I just -- and I told you there were other  
9 factors in addition to the sentencing guidelines that  
10 Judge Garaufis has to consider.

11           So 18 USC 3553 actually discusses the factors  
12 that the Court considers in imposing a sentence, and I am  
13 going to go through some of the important ones; the  
14 nature and the circumstances of the offense, the history  
15 and the characteristics of you, the defendant, the need  
16 for the sentence imposed. And in the statute it says to  
17 reflect the seriousness of the offense, to promote  
18 respect for the law, to provide what would be fair or  
19 just punishment, what kind of a sentence is necessary,  
20 what sentence is necessary to protect the public from  
21 further crimes of the defendant, and what's necessary to  
22 provide the defendant with neither either education or  
23 vocational training, medical care, other correctional  
24 treatment, in the most effective manner, et cetera.

25           So there are a number of factors that the Court

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1 considers and the guidelines are just one of them, and  
2 the guidelines as I said are advisory.

3 Do you understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. Let's go to the plea  
6 agreement. Do you have a copy of the agreement there?

7 MR. SCHNEIDER: We do.

8 THE COURT: Great. And Mr. Schneider, is this  
9 the only agreement currently between Mr. Brogan and the  
10 government?

11 MR. SCHNEIDER: We signed one proffer agreement  
12 in the past, but this is the only agreement really that  
13 took place.

14 THE COURT: Okay. Mr. Selden?

15 MR. SELDEN: That is correct.

16 THE COURT: All right. And Mr. Brogan, did you  
17 read this agreement?

18 THE DEFENDANT: I have, yes.

19 THE COURT: Have you had a chance to discuss it  
20 with your lawyer?

21 THE DEFENDANT: Yes, I have.

22 THE COURT: And was he able to answer all of  
23 your questions?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And on the last page, there's a

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1 signature above your name. Is that your signature?

2 MR. SCHNEIDER: We have an unsigned copy.

3 THE COURT: Did you sign a copy?

4 THE DEFENDANT: I did, sir, yes.

5 THE COURT: Yeah, I think this is the copy.

6 Does that look like it? I'll hand it over if you want to  
7 see it.

8 THE DEFENDANT: Yes, sir. Yes, ma'am (sic),  
9 that's my signature.

10 THE COURT: Okay, great. So do you feel  
11 comfortable that you understand the agreement?

12 THE DEFENDANT: Yes.

13 THE COURT: Okay. So I am just going to go  
14 through parts of it. If there's anything else that you  
15 would like to put on the record, I would be happy to do  
16 it.

17 So in paragraph 1 says that you'll waive  
18 indictment and plead guilty to an information, which you  
19 have already done -- at least you've waived indictment.  
20 We're now talking about the guilty plea.

21 If you do that, you're facing a penalty of a  
22 minimum of zero years in prison, and a maximum of 10  
23 years in prison.

24 Do you understand that?

25 THE DEFENDANT: Yes, sir.

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1           THE COURT: There's a maximum period of  
2 supervised release of three years, to follow any term of  
3 imprisonment, and there's a separate penalty for a  
4 violation of a condition of release which is that you  
5 could be sentenced to up to two years in prison without  
6 credit for the time you had been in prison before your  
7 release, or the time you served on post-release  
8 supervision.

9           Do you understand how that works and what that  
10 means?

11           THE DEFENDANT: Yes, sir.

12           THE COURT: Okay. So you would be supervised  
13 by a probation officer. There would be a number of  
14 conditions. You would have to follow those conditions,  
15 and what we were talking about just a minute ago is that  
16 there's a separate penalty for a violation of those  
17 conditions.

18           THE DEFENDANT: Yes, sir.

19           THE COURT: Okay. On page 2, subparagraph D,  
20 the maximum fine is the greater of \$250,000 or twice the  
21 gross gain and twice the gross loss. I'm not sure quite  
22 how that's calculated. I think we're talking 250.

23           MR. SCHNEIDER: I don't think there's any gain  
24 or loss here, but I am not -- I am not aware of any, so I  
25 would think \$250,000 would be the maximum.



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1 THE COURT: I think so.

2 MR. SELDEN: I believe that's correct, your  
3 Honor.

4 THE COURT: Okay, thanks. Restitution --

5 THE DEFENDANT: Your Honor, if I could ask  
6 though, now is that a range from zero to --

7 MR. SCHNEIDER: Yes.

8 THE COURT: Zero to 250.

9 THE DEFENDANT: Okay.

10 THE COURT: It's just the maximum. The maximum  
11 that could be imposed is 250.

12 THE DEFENDANT: Twice the gross gain or twice  
13 the gross loss. What is that -- what does that mean?

14 MR. SCHNEIDER: That relates to economic  
15 crimes.

16 THE DEFENDANT: Oh, okay. I (indiscernible).

17 MR. SCHNEIDER: Or if there was some loss  
18 attributable to your conduct, then it could --

19 THE DEFENDANT: Okay.

20 MR. SCHNEIDER: -- be twice that amount.

21 THE DEFENDANT: Okay.

22 MR. SCHNEIDER: It could be -- but we're  
23 unaware at this point of any loss attributable to your  
24 conduct, okay? So I believe the maximum is \$250,000.

25 THE DEFENDANT: A salient question actually,

Proceedings

1 going back to December 12th, 2018, when the visitation --

2 MR. SCHNEIDER: Um-hum.

3 THE DEFENDANT: -- the visitation  
4 (indiscernible).

5 MR. SCHNEIDER: When you were arrested?

6 THE DEFENDANT: Expenses to cover -- I mean  
7 just, you know --

8 MR. SCHNEIDER: No, it's not investigative  
9 expenses.

10 THE DEFENDANT: Okay. I just wanted to be  
11 sure.

12 MR. SCHNEIDER: It's loss to the victim.

13 THE DEFENDANT: Okay, okay.

14 THE COURT: And it's unlikely even if there  
15 were investigative expenses that they would exceed  
16 \$250,000.

17 THE DEFENDANT: Right.

18 THE COURT: But I think both the prosecutor and  
19 your lawyer are saying that they can't conceive at this  
20 time of any economic gain or loss.

21 THE DEFENDANT: Oh, okay. Okay.

22 MR. SELDEN: That is correct, your Honor.

23 THE COURT: And I have to confess, I can't  
24 either but it doesn't mean there aren't -- there isn't  
25 one but it's unlikely, pretty unlikely.

Proceedings

1 Is restitution an issue here?

2 MR. SELDEN: Your Honor, pursuant to the  
3 statute, the restitution is mandatory in the amount of  
4 each victim's losses as determined by the Court but at  
5 this time, we don't have a belief that restitution will  
6 be applicable in this case.

7 THE COURT: Okay.

8 MR. SELDEN: Thank you, your Honor.

9 THE COURT: Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. Again, it has to do with the  
12 losses, the same thing we just talked about before.

13 There is a fee though of \$100, a special  
14 assessment that you do have to pay.

15 THE DEFENDANT: I'm aware of that. Yes.

16 THE COURT: Okay. So paragraph 2 talks about  
17 sentencing, and we talked about the guidelines but let's  
18 just do it one more time. The guidelines are just guides  
19 that help Judge Garaufis decide how to sentence you. As  
20 I said, they're not binding. They're advisory. He's  
21 going to calculate the guidelines range after reading the  
22 pre-sentence investigation report, and holding a hearing.

23 You and your lawyer will have the opportunity  
24 to weigh in on that, to present all the evidence you  
25 believe he needs to hear, as will Mr. Selden and the

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1 government.

2 And the Judge Garaufis will calculate the  
3 guidelines range. As I said, no one at this time knows  
4 for sure what the guidelines range will be. As your  
5 lawyer said, what's in paragraph 2 is just the  
6 government's estimate of what the guidelines range will  
7 be. And you and your lawyer apparently agree that that's  
8 the correct estimate. So --

9 THE DEFENDANT: Which means that that -- your  
10 Honor, that estimate -- that it could actually fall above  
11 or below the parameters --

12 THE COURT: Right.

13 THE DEFENDANT: -- specified herein --

14 THE COURT: That's right.

15 THE DEFENDANT: -- of this agreement. Okay.

16 THE COURT: So I am just going to ask the  
17 government briefly to explain its calculus.

18 MR. SELDEN: Thank you, your Honor.

19 Your Honor, with regards to the government's  
20 preliminary guidelines calculation, the government  
21 believes that the base offense level is a level two --  
22 I'm sorry, 12, pursuant to 2(a)(6.1)(A)(1).

23 Specifically, the government believes that  
24 there are no potential enhancements as it as it relates  
25 to the base offense level, for a total offense level of

## Proceedings

1 12.

2 If the defendant clearly accepts and  
3 demonstrates a responsibility through allocution and  
4 subsequent conduct prior to the imposition of sentence, a  
5 two-level reduction will be warranted pursuant to  
6 sentencing guidelines provision 3(e)(1.1)(A), resulting  
7 in an adjusted offense level of a 10, and a range of  
8 imprisonment of 6 to 12 months, assuming that the  
9 defendant falls within criminal history category one.

10 Thank you, your Honor.

11 THE COURT: Anything to add, Mr. Schneider?

12 MR. SCHNEIDER: No, just that I believe that is  
13 the accurate guidelines calculation. That sentencing  
14 level falls within Zone B of the guidelines. I've  
15 discussed that with my client. Zone B allows the Court  
16 to impose a sentence of probation, substituting home  
17 confinement or community confinement for the  
18 incarceratory term of 6 to 12 months.

19 And obviously, I've also discussed with him  
20 that the judge has certain discretion to give a sentence  
21 outside the guidelines range, either above or below the  
22 range.

23 THE COURT: Do you understand what your lawyer  
24 said?

25 THE DEFENDANT: Yes, sir.

Proceedings

1           THE COURT: So it may be that there are some  
2 possibilities that you and your lawyer will be seeking  
3 but there's no guarantee either way whether they will be  
4 accepted or not. Okay? Any questions at all?

5           THE DEFENDANT: No. No, sir.

6           THE COURT: Okay. In paragraph 4, you -- well,  
7 actually you have stipulated to this guidelines  
8 calculation which your lawyer believes is correct.

9           In paragraph 4, you've agreed not to appeal or  
10 otherwise challenge your sentence or conviction, if you  
11 receive a sentence of 12 months or less.

12           Do you understand that?

13           THE DEFENDANT: Yes, sir.

14           THE COURT: Okay. Is there anything else in  
15 this agreement that either party thinks should be placed  
16 on the record?

17           MR. SELDEN: No, not for the government. Thank  
18 you, your Honor.

19           THE COURT: Okay.

20           Do you have any questions about the agreement  
21 that you would like to either ask me, or ask your lawyer  
22 about, or anything about this case before we go any  
23 further?

24           THE DEFENDANT: Yes.

25           MR. SCHNEIDER: Do you want to ask me?

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1 THE DEFENDANT: Yes.

2 MR. SCHNEIDER: Okay.

3 (Counsel and client confer)

4 MR. SCHNEIDER: Thank you, Judge.

5 THE COURT: Okay. Were all your questions  
6 answered?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. This is probably not  
9 applicable to you but if you're sentenced to prison,  
10 there's no early release on parole. We don't have parole  
11 in federal court.

12 THE DEFENDANT: Yeah, I was made aware of that  
13 as a matter of fact.

14 THE COURT: Okay.

15 THE DEFENDANT: Yes.

16 THE COURT: Good. So once again, Do you have  
17 any questions you would like to ask me or your lawyer  
18 before you proceed?

19 THE DEFENDANT: No, I guess nothing. Perhaps  
20 as we delve into it, I might come up with some questions.  
21 I don't have any at the moment.

22 THE COURT: I think we're pretty much through  
23 all the important rights and other issues.

24 So are you ready to plead?

25 THE DEFENDANT: Yes, sir.

Proceedings

1 THE COURT: Mr. Schneider, is there any reason  
2 why Mr. Brogan should not plead guilty to the  
3 information?

4 MR. SCHNEIDER: No.

5 THE COURT: As to the information, how do you  
6 plead, Mr. Brogan?

7 THE DEFENDANT: I plead guilty, your Honor.

8 THE COURT: Are you pleading guilty  
9 voluntarily?

10 THE DEFENDANT: Yes, yes, your Honor.

11 THE COURT: Did anybody force you or threaten  
12 you to make you agree to plead guilty?

13 THE DEFENDANT: No, no.

14 THE COURT: Anybody made you any promises  
15 outside of the plea agreement?

16 THE DEFENDANT: None whatsoever.

17 THE COURT: Anybody promised you what your  
18 sentence will be?

19 THE DEFENDANT: No, no. I have no assurance as  
20 to what it is going to be, to be quite honest with you.

21 THE COURT: Or even what the guidelines range  
22 will be?

23 THE DEFENDANT: Well, I mean I am going based  
24 on the guidelines here in this plea agreement. That's  
25 all I have to go on.



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1 THE COURT: Right. But again, that is just the  
2 government's estimate and your lawyer's estimate. Judge  
3 Garaufis will make the final decision.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: So you understand that?

6 THE DEFENDANT: I do, yes.

7 THE COURT: Okay. Great.

8 So can you tell me what it is that you did that  
9 makes you guilty of the charge?

10 THE DEFENDANT: Okay. On December 4th, 2018, I  
11 came home from work, and I was in my room. I had my  
12 laptop on. And I just -- I was about to turn the laptop  
13 off, to be quite honest with you, and I got an email. I  
14 believe it came from LifeSite News, I believe. I don't  
15 recall for certain. I do recall it was December 4th.

16 And quite honestly, I -- the only reason I  
17 recall the incident is because of the subsequent fallout  
18 from it. Otherwise, if this would have never happened, I  
19 would -- I almost certainly wouldn't recollect what  
20 happened that night.

21 MR. SCHNEIDER: You don't have to tell the  
22 whole story. I appreciate that you want to but all the  
23 judge has to hear is the elements of the crime.

24 THE DEFENDANT: Right.

25 MR. SCHNEIDER: Okay?

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1 THE DEFENDANT: Well, ultimately, there was a  
2 link to a clip for that particular senator --

3 THE COURT: Um-hum.

4 THE DEFENDANT: -- who appeared on a -- it was  
5 ABC This Week program, and -- well, I was angered by  
6 some, I guess you would -- what you would refer to as  
7 conciliatory comments that -- against -- well, against --  
8 well, quite honestly, as it states in here, against the  
9 executive branch of government. But in addition, it was  
10 really conciliatory comments against the pro life  
11 movement.

12 MR. SCHNEIDER: When you say "conciliatory"  
13 what do you mean?

14 THE DEFENDANT: Well --

15 MR. SCHNEIDER: I don't know if you're using  
16 that word correctly.

17 THE DEFENDANT: Well, I guess -- counter --  
18 let's just refer to it as counter --

19 MR. SCHNEIDER: Counter, okay.

20 THE DEFENDANT: -- to -- strongly, strongly  
21 counter, to -- to those two particular entities.

22 MR. SCHNEIDER: Um-hum. Um-hum.

23 THE DEFENDANT: And so I was angry, and I --  
24 and in my anger, and that -- which was very, very  
25 uncharacteristic, I made a phone call to this senator's,

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1 I -- I -- you know, I believe it was the legislative  
2 office in Washington, D.C. Should I --

3 MR. SCHNEIDER: It's okay.

4 THE DEFENDANT: -- do I --

5 MR. SCHNEIDER: Just tell him what happened.

6 THE DEFENDANT: Do I divulge the name of the  
7 senator?

8 MR. SCHNEIDER: No, no.

9 THE DEFENDANT: Keep that confidential. Okay.

10 MR. SCHNEIDER: No.

11 THE DEFENDANT: So I made a call. I left a  
12 voicemail, I recall. I really honestly don't recall  
13 everything that happened but I left a voicemail, and a  
14 lot of which is conveyed -- although I don't remember  
15 word-for-word -- okay. And it was profane, and it was --  
16 it was in anger. But most importantly it --

17 MR. SCHNEIDER: Before you say the "but",  
18 during that phone call, did you make threats against the  
19 senator?

20 THE DEFENDANT: I -- I -- I did make threats.

21 MR. SCHNEIDER: Okay.

22 THE DEFENDANT: Not necessarily intended to be  
23 perceived as -- as -- as a -- as a death threat or  
24 something with an ultimate demise. I mean that's, you  
25 know --

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1 THE COURT: What kind of threats did you make?

2 THE DEFENDANT: I did say, according to this,  
3 that I -- and I'm actually going by this based on what --  
4 I remember making the call. I mean based on what I am  
5 seeing here, a threat to -- a threat to shoot or to put a  
6 bullet into this particular government official.

7 THE COURT: Um-hum.

8 MR. SCHNEIDER: That's probably enough.

9 THE DEFENDANT: And --

10 MR. SCHNEIDER: It's okay.

11 THE COURT: Because of the government  
12 official's performance of his or her official duties?

13 THE DEFENDANT: What it was, it wasn't just the  
14 stance, it was what I perceived as -- as -- it was just a  
15 -- what I perceived as a -- it was just a lot of hubris  
16 on the part of the person, and it was just the way they  
17 came across about it. It was just -- it was -- it was a  
18 combination of the stance, plus the way it was  
19 presented --

20 THE COURT: Um-hum.

21 THE DEFENDANT: -- that I guess those two  
22 factors together, I -- I became very, very angry about  
23 it, and I shouldn't have done what I did because if not  
24 -- if for no other reason, in addition to many other  
25 reasons, it gives a proverbial black eye to a cause, the

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1 pro life cause and I shouldn't have done that. And I  
2 don't have a history of doing that. But I did it in that  
3 moment. I don't know, it was perhaps because maybe I had  
4 a bad day at work. I don't -- I don't recall if I did or  
5 I didn't. It was something I deeply regret.

6 And of course the subsequently, if I -- should  
7 I jump ahead eight days momentarily or do you want to --

8 MR. SCHNEIDER: I don't think we need to talk  
9 about the arrest.

10 THE COURT: I don't think we need that  
11 apparently.

12 THE DEFENDANT: There was never any  
13 intention --

14 THE COURT: But I think your lawyer would be  
15 happier -- your lawyer would probably -- you would make  
16 your lawyer happy by saying less rather than more, that's  
17 what lawyers --

18 MR. SCHNEIDER: Everything about the arrest  
19 will be known to Judge Garaufis.

20 THE DEFENDANT: Okay.

21 MR. SCHNEIDER: We don't have to put that on  
22 the record here.

23 THE DEFENDANT: Well, the call was made in  
24 anger, and it was a call made in anger which I would  
25 venture say fairly conclusively, based on the fact that I

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1 had forgotten about the call afterwards.

2 THE COURT: Um-hum. So you're trying to say  
3 you didn't mean it.

4 THE DEFENDANT: Of course, yeah. Yep. A  
5 hundred -- I can unequivocally say that and I think  
6 without venturing ahead, I think that they're -- the  
7 investigation done by the United States Capitol Police  
8 and any affiliated authorities would convey that.

9 THE COURT: Um-hum.

10 THE DEFENDANT: And I think it has, based on  
11 the fact that I am here today, and not inside a prison  
12 cell. So I --

13 THE COURT: Right.

14 THE DEFENDANT: -- would like to think that --

15 MR. SCHNEIDER: Right, that is --

16 THE DEFENDANT: -- is (indiscernible) --

17 MR. SCHNEIDER: I think that what Mr. Brogan is  
18 trying to say, is he had no intent to carry out the  
19 threat. I've informed him, that's not an element of the  
20 crime. You don't have to have intent to carry out the  
21 threat to meet the elements of the statute.

22 THE COURT: Right, and --

23 THE DEFENDANT: Yeah, he -- Michael, my lawyer,  
24 did inform me of that. Although I would just reinforce  
25 that there was never any intention to carry out any crime

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1 beyond that phone call.

2 THE COURT: But the charge does require that  
3 you intend to impede, intimidate, and interfere with --

4 MR. SCHNEIDER: Or retaliate against. So I  
5 believe that --

6 THE COURT: Intend to retaliate against, right.

7 MR. SCHNEIDER: -- the senator made statements  
8 in her capacity as a senator regarding reproductive  
9 rights, and the president, and that was the genesis of  
10 the call. I think that meets that element.

11 MR. SELDEN: I think that if Mr. Brogan is in  
12 agreement with that, we would agree that that would  
13 satisfy those elements. So we would just inquire to the  
14 Court if Mr. Brogan is in fact in agreement with Mr.  
15 Schneider's position, that in fact at the time he was  
16 intending to retaliate against the senator for the  
17 senator's position and criticism and the president, and  
18 with regards to reproductive rights.

19 We would just inquire, is that correct?

20 THE DEFENDANT: Yes, I would concur with that.  
21 Yes.

22 MR. SELDEN: And the one other thing that the  
23 government would proffer had the case proceeded to trial  
24 or with regards to the elements of proof that we would  
25 establish is that at the time as Mr. Brogan has clearly

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1 made aware to the Court, I want to just specifically  
2 articulate, he was in his home in Brooklyn, New York,  
3 within the Eastern District of New York.

4 THE COURT: Okay.

5 MR. SELDEN: And that the call itself did occur  
6 to the Washington field office of the senator that Mr.  
7 Brogan has made reference to. Thank you, your Honor.

8 THE COURT: Now in my copy of the information,  
9 there is an "and" between the intent to impede,  
10 intimidate, interfere with such officials.

11 MR. SCHNEIDER: Yeah, the government writes  
12 their --

13 THE COURT: And with intent.

14 MR. SCHNEIDER: -- they write their indictments  
15 and informations in that way to include "and". The  
16 statute is written "or" and so if you have any of those  
17 motivating factors, you have met the elements of the  
18 statute.

19 THE COURT: Right. So I am going to just --

20 THE DEFENDANT: So your Honor --

21 THE COURT: -- consult my handy copy. So I  
22 think you're saying to me that as a member of pro life --  
23 as a believer in pro life, the idea of ending a life  
24 would not be consistent with your philosophy.

25 THE DEFENDANT: Oh, I could say that with a



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1 hundred percent certainty.

2 THE COURT: Okay.

3 THE DEFENDANT: We --

4 THE COURT: Yes, I think you conveyed that.

5 THE DEFENDANT: -- in controlling --

6 MR. SCHNEIDER: It's okay.

7 THE DEFENDANT: Okay.

8 MR. SCHNEIDER: He just wanted to make sure  
9 that that was all true.

10 THE DEFENDANT: Yes, yes. No, that includes  
11 people that are alive, as well. When I say "alive" your  
12 Honor, I mean outside the womb because everyone is alive  
13 from conception. I just want to --

14 THE COURT: Oh, that's a debate that's much  
15 bigger than all of us here today.

16 THE DEFENDANT: I just want to specify that  
17 that that means --

18 THE COURT: Okay. Is it 115(a) that I should  
19 be looking at?

20 MR. SCHNEIDER: Yeah, (a)(1) --

21 MR. SELDEN: That's correct.

22 THE COURT: (a)(1)?

23 MR. SCHNEIDER: (a)(1)(B).

24 THE COURT: (a)(1)(B): "Threatens to assault,  
25 kidnap or murder U.S. official", et cetera, et cetera,

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1 et cetera, an official (indiscernible) would be a crime  
2 of -- "with intent to impede, intimidate, or interfere  
3 with such individual while engaged in the performance" --  
4 "or with intent to retaliate".

5 MR. SCHNEIDER: Yes.

6 THE COURT: Mr. Schneider, you win the debate.

7 MR. SCHNEIDER: It's not my first rodeo, Judge.

8 THE COURT: So that was an important element  
9 because I want to be sure that your guilty plea is to the  
10 statute and that what you have said is that what you did  
11 is consistent with what you're pleading guilty to. And  
12 so you did not -- you are telling me that you did not  
13 intend to harm anyone but you did intend to retaliate  
14 against that person for the position that the person took  
15 in her official position.

16 THE DEFENDANT: Yes, yes, your Honor. With the  
17 strict -- I guess you could call it verbal retaliation  
18 limited to such --

19 MR. SCHNEIDER: Yes.

20 THE DEFENDANT: -- verbal retaliation.

21 THE COURT: Yes.

22 THE DEFENDANT: And nothing further.

23 THE COURT: Got it. I think that's  
24 satisfactory. Does the government have any additional  
25 questions?

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1 MR. SELDEN: No, thank you, your Honor.

2 THE DEFENDANT: Without any intention to make a  
3 second call.

4 MR. SCHNEIDER: Yeah.

5 THE DEFENDANT: Okay. Yes.

6 THE COURT: Okay. So Mr. Brogan, I find that  
7 you understand your rights --

8 THE DEFENDANT: Yes, sir.

9 THE COURT: -- the charges against you, the  
10 rights you're giving up by pleading guilty, the  
11 consequences of a guilty plea, including the possible  
12 sentence, fine, and other penalties. You understand  
13 there's no guarantee what your sentence will be, or what  
14 your guidelines range will be, and I do find that there  
15 is a factual basis for the plea. That you did intend not  
16 to harm anyone but to retaliate against an official -- a  
17 United States official on account of the performance of  
18 official duties.

19 So I therefore recommend that Judge Garaufis  
20 accept your plea of guilty to the information.

21 THE DEFENDANT: Yes, your Honor.

22 MR. SELDEN: Thank you, your Honor.

23 MR. SCHNEIDER: Thank you, your Honor.

24 THE CLERK: Sentencing is set for September  
25 10th at 10:30 a.m. before Judge Garaufis.

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1 MR. SCHNEIDER: Thank you.

2 THE COURT: Okay, thanks.

3 THE DEFENDANT: Thank you.

4 MR. SCHNEIDER: Oh, one more issue, your Honor.

5 Mr. Brogan, who was arrested in December, has been on

6 electronically monitored home confinement.

7 THE COURT: Okay.

8 MR. SCHNEIDER: He is only allowed to go to

9 work. I've spoken to the government and pretrial. They

10 both consent to modify the conditions to a curfew, still

11 electronically monitored, but just a curfew to be set by

12 pretrial.

13 THE COURT: Okay. So it's not home

14 confinement.

15 MR. SCHNEIDER: Right. He'll still be

16 electronically monitored but it won't be -- they won't be

17 monitoring him all during the day when he is at work, and

18 things like that.

19 THE COURT: Okay.

20 MR. SELDEN: And, your Honor, just to -- so the

21 record is clear, we don't have an opposition to that, and

22 I understand from pretrial that they also have already

23 entered an agreement with regards to that as of

24 yesterday. The one request we would have is just that

25 Mr. Brogan continue to stay away from Washington, D.C.

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1 We have no reason to believe that he would go there but  
2 we would just ask for that stay away over the next  
3 approximately several months be in place.

4 THE DEFENDANT: Fine. I have no -- no issue  
5 with that.

6 THE COURT: Okay. All right. And if pretrial  
7 services finds that Mr. Brogan's adjustment has been  
8 good, and there's no objection to it, I will go along  
9 with that.

10 THE DEFENDANT: Thank you, your Honor.

11 THE COURT: So ordered.

12 (Counsel and client confer)

13 THE COURT: Anything else?

14 MR. SCHNEIDER: Nothing further.

15 MR. SELDEN: Not for the government. Thank  
16 you, your Honor. May we be excused?

17 THE COURT: Yes.

18 MR. SELDEN: Have a nice weekend everybody.

19 THE COURT: Thank you.

20 (Matter concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 29th day of June, 2019.

  
Linda Ferrara

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